



Washington State Office of Civil Legal Aid

1206 Quince St. SE
Olympia, WA 98504
MS 41183
360-704-4135
360-704-4003 (fax)

James A. Bamberger, Director
jim.bamberger@ocla.wa.gov

To: Civil Legal Aid Oversight Committee

From: Jim Bamberger

Re: Report for the Period January 1, 2007 – March 31, 2007

Date: March 5, 2007

Pursuant to RCW 2.53.020(3)(c), please find below the written report of the Director of the Office of Civil Legal Aid for the first quarter of calendar year 2007. Most of the activities of the Office of Civil Legal Aid were focused on efforts related to the 2007 biennial legislative session.

1. Justice in Jeopardy 2007: OCLA Budget Request

At its special meeting on December 18, 2007, the Civil Legal Aid Oversight Committee endorsed the FY 2007 – 2009 budget requests developed by the judicial branch agencies working under the Justice in Jeopardy umbrella. These requests included:

Office of Public Defense – Parents Representation	\$17,000,000
Office of Public Defense – Defense Quality Enhancements	\$19,000,000
Administrative Office of the Courts – Interpreter Funding	\$ 7,900,000
Administrative Office of the Courts – CASA Funding	\$13,000,000
Office of Civil Legal Aid – Rural Service/King County Access	\$ 5,268,000

These budget figures were presented to the Office of Financial Management. By statute and consistent with principles of separation of powers, the judicial branch budgets (including but not limited to those included in the Justice in Jeopardy Initiative) are to be transmitted to the Legislature without revision and included in the Governor's proposed budget. Governor Gregoire transmitted her proposed budget on December 19, 2006. This budget included all of the budget requests submitted by the judicial branch. However, her budget documents took issue with the magnitude of the judicial branch requests. These documents suggested that there were \$55 million in potential savings that could be realized by reducing judicial branch expenditures that the administration did not believe to be necessary or appropriate. The \$55 million savings was identified as the means by which the state's operating budget would end up at the Governor's objective of a \$605 million surplus by the end of the FY 2007-09 biennium. The

Office of Financial Management subsequently shared a more detailed listing of the judicial branch expenses with which they disagreed. While exception was taken with the magnitude of a number of the Justice in Jeopardy proposals, OFM did not take exception to the request submitted by the Office of Civil Legal Aid.

The legislative session is in its ninth week as of the date of this report. The budget writing effort is starting to kick into high gear. The House Appropriations Committee established two subcommittees to provide budget recommendations in the areas of (a) education and (b) general governmental expenses. The Subcommittee on General Government and Audit Review was assigned responsibility for making recommendations relating to the budget requests of judicial branch agencies. On February 22, 2007 the Subcommittee adopted its recommendations. The Subcommittee recommended full funding of the OCLA budget request. In addition, and in large measure due to the extraordinary efforts of Rep. Patricia Lantz, the Subcommittee recommended funding levels for the Office of Public Defense (both parents representation and defense quality enhancements), and the Administrative Office of the Courts (for both CASA and Interpreters) above those suggested by the Governor. The Subcommittee's recommendation now goes to the full House Appropriations Committee, which is expected to release its budget on or about March 19th. Thus, by the time the Oversight Committee convenes on March 30th, we will know the House funding level for the Office of Civil Legal Aid and the other Justice in Jeopardy budget requests.

Once the House budget is approved, focus turns to the Senate and the Senate Ways and Means Committee. That committee is expected to produce and adopt its budget blueprint in early April.

2. SB 5470 – A Bill Relating to Dissolution Proceedings

Senator Jim Hargrove (D-Hoquiam) has been working for months with representatives of the superior courts, clerks, parents, legal aid attorneys, private family law attorneys, the WSBA's Family Law Executive Committee, domestic violence victim advocates, and others to address longstanding issues relating to the manner in which matters relating to child residential placement (a/k/a custody), support, consideration of claims of domestic violence, treatment of victims of domestic violence and other matters are addressed in domestic relations and family law cases. In January, Senator Hargrove sponsored legislation SB 5470, which would substantially alter the way family law cases would be handled and the resources that would be made available to family law litigants. The legislation included two provisions that directly affected the Office of Civil Legal Aid:

- A provision appropriating funding to the Office of Civil Legal Aid to provide legal representation to indigent persons in matters relating to domestic violence in family law matters, and
- A provision directing the Office of Civil Legal Aid to convene and staff a task force to establish statewide protocols for dissolution cases.

The Office of Civil Legal Aid was requested to submit a fiscal note to the Office of Financial Management. The OCLA's fiscal note quantified the cost of staffing the task force and of

providing enhanced capacity to represent low income persons on matters relating to domestic violence in family law matters. A copy of the fiscal note can be found at:

<http://www.ofm.wa.gov/fns/legsearch.asp?BillNumber=5470&SessionNumber=60>

A copy of the bill can be found at: <http://apps.leg.wa.gov/billinfo/summary.aspx?bill=5470>

The OCLA worked with Senator Hargrove, committee staff and the Board for Judicial Administration to amend the bill to change the provisions relating to staffing and support for the task force. As currently written, the bill requests that the Supreme Court convene and support the task force and, if the Court does not do so within 90 days of the effective date of the act, responsibility for doing so will fall to the Office of Civil Legal Aid.

The OCLA calculated that the minimum cost of providing enhanced representation for low income persons on domestic violence matters in family law cases is about \$6.2 million per biennium. This is premised on stationing dedicated family law/domestic violence attorneys in each of the regions where there will be a civil legal aid presence (in accordance with the ATJ Board's State Plan and the OCLA 2007-09 budget request). We have advised legislators and staff that this funding would need to be in addition to and cannot be a substitute for the funding sought by the Office of Civil Legal Aid in its 2007-09 budget request. As of this writing, the bill was reported out of the Senate Ways and Means Committee stripped of all appropriations. An update will be provided at the Oversight Committee meeting on March 30th.

3. HB 1934 – A Bill to Amend RCW 2.53.020 to Clarify the Role and Responsibilities of the Office of Civil Legal Aid

Over the course of the past few months, questions arose regarding the scope of legal authority for activities currently being carried out by the Office of Civil Legal Aid. These questions have fallen into two general categories: (a) authority to incur certain classes of expenditures associated with the OCLA's support of the Civil Legal Aid Oversight Committee and the state-funded civil legal aid delivery system; and (b) the Office of Civil Legal Aid's authority to qualitatively evaluate state-funded legal aid programs against generally accepted civil legal aid quality and performance standards.

As chronicled in earlier reports, the Office of Civil Legal Aid has been involved in various activities designed to support the effective delivery of state-funded civil legal aid services in Washington. These include, but are not limited to:

- Staffing and supporting the Civil Legal Aid Oversight Committee
- Participating on various Access to Justice Board committees that are working on issues affecting the manner in which state-funded legal aid services are supported and delivered. These include: the State Plan Review Committee, the State Plan Oversight Committee, the Technology Committee and the Technology Principles Implementation Strategies Committee.
- Underwriting, contracting for third party consulting services related to, and managing the process for acquiring a uniform case management system that will enhance client service

delivery efficiency and help ensure the highest level of fiscal and administrative accountability by state-funded legal aid providers.

All of these activities are designed to support efficient and effective delivery and appropriate oversight of state-funded civil legal aid services. Recently, however, questions were raised regarding the OCLA's scope of current legal authority to engage in these activities. Specifically, RCW 2.53.030(2) states that state-appropriated funding "shall be used solely for the purpose of contracting with qualified legal aid programs for legal representation of indigent persons." It has been suggested that this language could be read to limit the authority of the OCLA to engage in the activities listed above.

There is also a question about the scope and discharge of the Office of Civil Legal Aid's authority to "monitor and oversee"¹ the use of state civil legal aid funding. As reported earlier, the Office of Civil Legal Aid conducts a biennial review of the performance of the "qualified legal aid program" with which it contracts -- the Northwest Justice Project. The protocol developed by the Office of Civil Legal Aid includes inquiry into NJP's fiscal and administrative practices to ensure NJP's compliance with applicable statutory and contractual responsibilities. It also includes an inquiry into the quality and effectiveness of NJP's performance under the contract. In reviewing NJP's performance, the Office of Civil Legal Aid applies generally accepted standards for civil legal aid delivery. These are set forth in the Access to Justice Board's Civil Equal Justice Performance Standards (1999)², the American Bar Association's Standards for the Delivery of Civil Legal Aid (Rev. 2006)³, the American Bar Association's Principles of a State System for the Delivery of Civil Legal Aid (2006)⁴ and the Legal Services Corporation's Performance Criteria (Rev. 2006)⁵.

While this has been the scope of the OCLA's review of NJP's performance, the existing statute can be read to limit the OCLA's review authority to questions of compliance with statutory requirements and limitations. It could even preclude review of NJP's compliance with contractual responsibilities. The statute reads: "The director [of the Office of Civil Legal Aid] shall ... (b) Monitor and oversee the use of state funding to ensure compliance with this chapter."

To address the questions relating to both the scope and substance of the OCLA's legal authority, a statutory amendment was drafted. The amendment would have taken the existing language ("Monitor and oversee the use of state funding to ensure compliance with this chapter") and changed it to "Administer, support, and oversee the use of state funding to ensure efficient and effective delivery of state funded civil legal aid and compliance with this chapter." The language was designed to accomplish four objectives:

¹ RCW 2.53.020(3)(b)

² <http://www.wsba.org/atj/publications/perfstandards.htm>

³ <http://www.abanet.org/legal services/sclaid/downloads/civillegalaidstds2006.pdf>

⁴ <http://www.abanet.org/legal services/sclaid/downloads/06A112B.pdf>

⁵ http://www.lri.lsc.gov/pdf/06/060018_performancecriteria.pdf

- Eliminate the redundancy in the language “monitor and oversee” (as the terms are virtually synonymous)
- Harmonize the statutory directive that the OCLA “administer” state appropriated funding in RCW 2.53.005 and RCW 2.53.030 with the language defining the duties of the OCLA Director in RCW 2.53.020
- Ensure that the OCLA Director has clear authority to engage in activities and expend resources to support the delivery of state-funded civil legal aid services
- Clarify the OCLA’s authority to qualitatively review the performance of state-funded legal aid providers against commonly accepted quality benchmarks

The standard “efficient and effective” was drawn both from national and statewide sources. Nationally, this standard finds its source in the Legal Services Corporation Act (“effective and economical”) and is used as the benchmark in the ABA and LSC standards. At the statewide level, the standard “efficient and effective” is the benchmark established by the Legislature to be used by the Office of Public Defense. (RCW 2.70.005: “[The purpose of the Office of Public Defense is] to ensure the effective and efficient delivery of the indigent appellate services funded by the state of Washington.”)

The Office of Civil Legal Aid consulted with staff of the Administrative Office of the Courts, the House Appropriations Committee and the Senate Ways and Means Committee. Information about the need for and language of the amendment was provided to WSBA and EJC staff. Representative Lantz was asked to and agreed to sponsor the legislation, which was introduced as HB 1934.

Shortly after the bill was introduced, some representatives of the civil legal aid community raised concerns about the need, scope and effect of the bill. Despite the active involvement of the Chairs of both the Civil Legal Aid Oversight Committee and the Access to Justice Board, consensus was not achieved. The Office of Civil Legal Aid agreed not to pursue the legislation this session. Instead, it was determined that the Civil Legal Aid Oversight Committee would convene a process by which the issues raised by HB 1934 would be explored and addressed. This process will be initiated shortly.

4. Agricultural Mediation Services Contract

The Office of Civil Legal Aid administers a contract with the Washington State Grange to fund the operation of a program to provide mediation services in disputes between agricultural employers and employees. This contract is funded through a budget proviso first written into the 2004 supplemental budget and carried forward into the 2005-07 biennial budget.

The contract for this biennium included a requirement that the Grange contract with an independent third party to review the effectiveness of the Agricultural Dispute Resolution Program (ADRS) and make recommendations designed to enhance its effectiveness. The Grange retained Seattle-based independent consultant Deborah Feldman to conduct this evaluation. Ms. Feldman and an associate conducted numerous interviews and reviewed a host of information relating to the operation of the program. Ms. Feldman made a number of

observations relating to the program and offered recommendations designed to enhance the effectiveness of the program. The Office of Civil Legal Aid has requested that the Grange, working with the ADRS Oversight Board, submit a formal response to and plan to address Ms. Feldman's recommendations.

In light of Ms. Feldman's recommendations, the Office of Civil Legal Aid has proposed that the budget proviso pursuant to which this program is funded be extended for the FY 2007-09 biennium.

5. Other Activities of the Office of Civil Legal Aid

During the present quarter, the Director of the Office of Civil Legal Aid has been involved in the following additional activities:

- Participation on the Access to Justice Board's State Plan Oversight Committee, which is guiding and monitoring implementation of the revised State Plan for the Delivery of Civil Legal Aid. This committee meets every three weeks.
- Participation on the Access to Justice Board's Technology Committee.
- Managing the statewide case management system procurement process. We reviewed presentations from three CMS vendors, conducted on-site review of one vendor, and are in the final stages of the vendor selection process.
- Coordination with Justice in Jeopardy partners regarding the legislative session and related issues.
- Completion and bringing on line the Office of Civil Legal Aid's website: www.ocla.wa.gov
- Adoption and publication of the Office of Civil Legal Aid's privacy and public records policies.
- Gave a speech to the University of Washington's Information School (iSchool) on the occasion of the school's conferring an honorary degree upon ATJ Technology Principles Committee Chair, former King County Superior Court Judge Donald Horowitz.
- Consulted with members of Wisconsin's access to justice community and, along with Chief Justice Gerry Alexander, attended Wisconsin's first ever statewide Access to Justice Conference.
- Presented at the national Equal Justice Conference on issues relating to state planning and rural pro bono delivery.

6. Civil Legal Aid Delivery – 2006

The Office of Civil Legal Aid has received final statistics from the Northwest Justice Project for calendar year 2006. For the year, NJP closed nearly 12,000 cases that were eligible to be supported with state funding (about 18,000 cases total). Of these, about 1,000 cases involved the provision of extended legal representation to eligible clients, and about 11,000 involved the provision of advice, brief service and referral services. OCLA-eligible cases represented about 63% of all NJP cases.

Substantively, the three largest areas of state-funded legal assistance were family law, housing and public assistance/health:

- 6,700 involving legal issues relating to domestic relations and family law
- 3,000 involving legal issues relating to housing
- 1,200 involving legal issues relating to public assistance and health care

The statistics also demonstrate that, within the limits of program resources, both CLEAR and field office services are provided on a geographic basis substantially in proportion to the percentage of eligible low-income clients resident in each of the 19 delivery regions.

In addition to its statistical reports, NJP has also provided its most recent narrative report on client services. A copy of this report accompanies the materials sent out for the March 30, 2007 meeting of the Civil Legal Aid Oversight Committee. This report provides insight into the substance of the problems faced by low income clients throughout the state and the value of state and federally funded legal aid services to these clients.

Finally, a recent study conducted by McClatchy Newspapers provided a sobering picture of poverty and extreme poverty trends in the United States. The full report can be found at <http://www.realcities.com/mld/kwashington/16760690.htm>. According to articles announcing the results of the study on February 22, 2007:

The percentage of poor Americans who are living in severe poverty has reached a 32-year high, millions of working Americans are falling closer to the poverty line and the gulf between the nation's "haves" and "have-nots" continues to widen.

A McClatchy Newspapers analysis of 2005 census figures, the latest available, found that nearly 16 million Americans are living in deep or severe poverty. A family of four with two children and an annual income of less than \$9,903 - half the federal poverty line - was considered severely poor in 2005. So were individuals who made less than \$5,080 a year.

The McClatchy analysis found that the number of severely poor Americans grew by 26 percent from 2000 to 2005. That's 56 percent faster than the overall poverty population grew in the same period. McClatchy's review also found statistically significant increases in the percentage of the population in severe poverty in 65 of 215 large U.S. counties, and similar increases in 28 states. The review also suggested that the rise in severely poor residents isn't confined to large urban counties but extends to suburban and rural areas.

The plight of the severely poor is a distressing sidebar to an unusual economic expansion. Worker productivity has increased dramatically since the brief recession of 2001, but wages and job growth have lagged behind. At the same time, the share of national income going to corporate profits has dwarfed the amount going to wages and salaries. That helps explain why the median

3/6/2007

Page 8 of 8

household income of working-age families, adjusted for inflation, has fallen for five straight years.

These and other factors have helped push 43 percent of the nation's 37 million poor people into deep poverty - the highest rate since at least 1975.

The report is a reminder that there is a large and fast growing population that needs access to and cannot afford essential justice services.